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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : Confirmation No. 9667
Ingvar SELMER-OLSEN et al. : Docket No. 2001-0136A
Serial No. 09/762,821 : Group Art Unit 1761
Filed April 23, 2001 : Examiner Carolyn A. Paden
AQUEOUS PRESERVATIVE :

RESPONSE

THE COMMISSIONER IS AUTHORIZED
TO CHARGE ANY DEFICIENCY IN THE
FEE FOR THIS PAPER TO DEPOSIT
ACCOUNT NO. 23-0975.

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Responsive to the Office Action of February 4, 2003, Applicants submit the following remarks in support of the allowance of the claims.

Further and favorable reconsideration is respectfully requested in view of these remarks.

Initially, the Office Action Summary page indicates that claims 4-12 are pending in the application, and that claims 1-3 are withdrawn from consideration. However, a Preliminary Amendment was filed with the present application, cancelling claims 1-4 and adding new claims 5-12. As indicated in the Remarks for the Preliminary Amendment, new claims 5-12 correspond to the claims in the International Preliminary Examination Report.

Thus, the claims which should be examined are claims 5-12 set forth in the Preliminary Amendment filed February 13, 2001.

The rejection of claims 4-12 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of US 5,993,875 in view of Villamar and further in view of Hjernevik is respectfully traversed.

The wording of this rejection as set forth in the first paragraph on page 2 of the Office Action, and particularly the wording "and further in view of" indicates that the Hjernevik reference (WO 99/12435) is required to support the double patenting rejection.

However the WO '435 reference is not available as prior art against the present invention, because its effective date as prior art, i.e. its publication date of March 18, 1999, is subsequent to Applicants' Norwegian priority date of August 14, 1998.

The Examiner, on the Office Action Summary page, has acknowledged receipt of a certified copy of the Norwegian priority application. Applicants note that the priority application was filed in the English language, thereby avoiding the necessity to submit a verified English translation of the priority application. The Examiner can determine from the certified copy of the priority application of record whether or not Applicants are entitled to the benefit of the priority date.

It is Applicants' position that they are in fact entitled to the benefit of the Norwegian priority date. Since the priority date antedates the effective date of March 18, 1999 for the WO '435 reference as prior art, Applicants submit that this reference is not available to reject the claims.

Accordingly, for this reason alone, the double patenting rejection should be withdrawn.

The rejection of claims 4-12 under 35 U.S.C. §102(e) as being anticipated by Hjernevik (WO 99/12435) is respectfully traversed.

It is Applicants' position that applying this reference to reject the claims under 35 U.S.C. §102(e) is improper, since this section of the statute relates to prior art which is either (1) an application published in the U.S. or (2) a U.S. patent, neither of which applies to WO '435. For this reason alone, the rejection under 35 U.S.C. §102(e) should be withdrawn.

As indicated above in connection with the double patenting rejection, the effective date of WO '435 as prior art is its publication date of March 18, 1999. If Applicants were not entitled to the benefit of their Norwegian priority date, then WO '435 would be available as prior art against the present invention under 35 U.S.C. §102(a). However, as indicated above, Applicants are entitled to the benefit of their priority date, thus avoiding any rejection of the claims under 35 U.S.C. §102(a) based on WO '435.

The objection to claim 4 is considered moot, since as indicated above, this claim was cancelled in accordance with the Preliminary Amendment filed with the present application.

Therefore, in view of the foregoing amendments and remarks, it is submitted that each of the grounds of objection and rejection set forth by the Examiner has been overcome, and that the application is in condition for allowance. Such allowance is solicited.

Respectfully submitted,

Ingvar SELMER-OLSEN et al.

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